



# PONTARDDULAIS COMPREHENSIVE SCHOOL YSGOL GYFUN PONTARDDULAIS



## DISCIPLINARY POLICY FOR ALL SCHOOL BASED STAFF

### POLISI DISGYBLU AR GYFER POB AELOD O STAFF MEWN YSGOLION

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It is recommended that this Model Disciplinary Policy as issued by the Local Authority is considered and adopted by all Governing Bodies within Swansea Council.

The decision on whether to adopt the model policy rests solely with Governing Bodies. If, the Governing Body does **not** accept the model policy, it will need to determine its own policy which must comply with statutory requirements and have been through a consultation process with the Trade Unions. Please be advised that the Local Authority can only provide advice to schools based on its recommended Model Policies.

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## **1. Policy Statement**

- 1.1 The Governing Body is responsible for the conduct and discipline of school staff and is required to have a procedure in place for dealing with staff disciplinary matters.
- 1.2 The aim of this procedure is to ensure consistent and fair treatment for all members of staff within the school.
- 1.3 This procedure recognises that disciplinary rules and procedures help to promote good employment relations as well as fairness and consistency in the treatment of individuals. The main purpose of the disciplinary policy is for the employer to achieve an improvement in work conduct, set behavioural expectations and to give the employee an opportunity to modify their conduct where this falls below the expected standard.
- 1.4 It is acknowledged that employees generally behave and carry out their responsibilities/ duties in a reasonable manner, but that from time to time breaches of discipline occur. This policy has been devised to deal with such situations and is based on best practice as outlined in the ACAS Code of Practice and the ACAS Advisory Handbook "Discipline and Grievances at Work" and Welsh Government Guidance, Disciplinary and Dismissal Procedures for all Staff 2002/2020.
- 1.5 In certain situations the breach in discipline may require the implementation of specific procedures to deal with issues of a specific nature, for example, Child Protection.
- 1.6 Governing Bodies and Headteachers are responsible for making employees aware of the school's standards of behaviour, enforcing rules and ensuring that any breaches are dealt with promptly. Where a potential disciplinary issue comes to light the Headteacher or Chair of Governors must act in accordance with section 6 this policy as soon as practicable. It is expected that a pragmatic approach will be taken and that invoking a disciplinary investigation may not necessarily be the appropriate first step.
- 1.7 Nothing in this policy is intended to prevent the Headteacher or Chair of Governors taking appropriate corrective action during the course of the management of their staff and the school. This should be documented and the employee advised of this in writing. A copy of this documentation should be kept by the manager. In fact, early intervention by a manager can make an employee aware that their conduct is not acceptable in circumstances where the employee may not know or realise that their conduct is not acceptable.
- 1.8 It is important that employees realise that they have responsibility of bringing any improper conduct to the notice of the Headteacher or Chair of Governors. Failure to do so, could in itself, be a disciplinary matter. For example, being aware of safeguarding or child protection issues and not reporting them.
- 1.9 Any grievance or harassment complaint raised during the disciplinary process which is related to the disciplinary proceedings or the circumstances relating to the alleged misconduct, will be dealt with as part of the disciplinary investigation process.
- 1.10 No grievance will be entertained when a Headteacher or Chair of Governors has acted reasonably within the remit of their role. This would be considered by the Chair of Governors in the case of the Headteacher and the Vice Chair in the case of the Chair of Governors.
- 1.11 The Director of Education, or their representative and a Diocesan Representative (where appropriate) are entitled to give advice on all proceedings relating to the Disciplinary Process.

## **2. Scope**

- 2.1 This staff disciplinary procedure applies to all school staff employed under a contract of employment with the school. It does not apply to support staff under probation, staff employed directly by the Local Authority, those working in the school by an employment agency and staff whose contract of employment is held by another body.
- 2.2 Members of staff should be made aware of this procedure and copies should be given to any member of staff who is the subject of any allegation.
- 2.3 The responsibility for disciplinary matters should be delegated by the Governing Body to the Headteacher, this decision must be minuted. However, should the Headteacher be compromised, the Chair of Governors will take over their role in the process.
- 2.4 Any allegations made against the Headteacher will be dealt with by the Chair of Governors. Should the Chair of Governors be compromised, the Vice Chair of Governors will take over their role in the process. If the Vice Chair is also compromised the Governing Body will have to select another governor who is not compromised, this decision must be minuted.

## **3. Matters outside the scope of the procedure**

- 3.1 Matters outside the scope of this disciplinary procedure include:
- Where employment is terminated:
    - by reason of redundancy.
    - by an employee reaching the end of a temporary or fixed-term contract.
  - Where any deficiencies in performance on the part of the staff member arise from a lack of aptitude or skill.
  - Staff grievances that employees raise with their employer.
  - Termination during or at the end of a probationary/induction period, whether or not extended beyond its originally specified duration.
  - Matters that should be dealt with through the Governing Body's general complaints procedure.

## **4. Key Points**

- 4.1 In all cases, the school and Governing Body will ensure that disciplinary cases are dealt with in an unbiased, open and fair way.
- 4.2 The key points are as follows:
- Where appropriate, every effort will be made to address concerns about behaviour or conduct without recourse to formal procedures.
  - HR advice should be sought at all stages of the disciplinary process.
  - No disciplinary action will be taken against a member of staff until the case has been fully investigated.
  - An investigator will be objective and impartial but a member of staff may object to an investigator. The Headteacher or Chair of Governors will determine whether the circumstances of the objection are valid and accepted and whether the investigator should be changed.
  - Where it is considered that the allegation(s) amount to lesser misconduct, the member of staff will be informed of the allegation(s) against them and will be given the opportunity to

defend the allegation(s) at a disciplinary hearing held before the Headteacher, or the Chair for allegations against the Headteacher.

- A member of staff will not normally be dismissed for a first breach of discipline in cases of misconduct but may receive a sanction in the form of a warning. Should the misconduct be repeated it may result in a more severe sanction under the misconduct process or a referral to the Staff Disciplinary and Dismissal Committee where it constitutes gross misconduct.
- The member of staff will be informed of any warnings at the end of the hearing, including the length of time they are to remain 'live'. The warnings will be confirmed in writing. At the member of staff's request, a copy of the warning will be sent to their Trade Union representative.
- Where it is considered that the allegation(s) amount to gross misconduct, the member of staff will be informed of the allegation(s) and will be given the opportunity to defend the allegation(s) at a hearing held before the Governing Body Staff Disciplinary & Dismissal Committee.
- The member of staff will be provided with details of the membership of the Staff Disciplinary & Dismissal Committee prior to a hearing and advised of their right of objection to any committee member. It will be for the Chair of Governors to determine whether the circumstances of the objection are valid and accepted and whether a member of the committee is removed.
- The member of staff will be provided with all relevant information prior to any hearing.
- The member of staff has the right to be accompanied by a work colleague or a representative of their Trade Union during the investigation, the disciplinary hearing and the appeal hearing.
- Dismissal for gross misconduct, following the decision of the Staff Disciplinary & Dismissal Committee or following the outcome of any appeal, is likely to be without notice. The Local Authority will issue notice that for all staff employed within its Community schools, for voluntary aided, this is the responsibility of the Governing Body.
- A member of staff has the right to appeal against any disciplinary sanction.
- The process is supportive towards the needs of the member of staff.
- Investigations and hearings will be conducted in English or Welsh, or with access to interpretation, at the request of the member of staff.

## **5. Informal discussion with Headteacher and/or Line Manager**

- 5.1 There will be occasions when it is appropriate for a member of staff's actions to be discussed with them as part of normal supervisory arrangements without recourse to the formal procedures. In such circumstances the member of staff will be given guidance and support from the Headteacher, Line Manager or Chair of Governors. This could take the form of an informal caution, advice, counselling, training instruction, coaching and/or other managerial strategies as appropriate.
- 5.2 It will be made clear to the member of staff:
- What they need to do in relation to their conduct.
  - How conduct will be monitored and reviewed.
  - That formal action could be taken if there is a recurrence of the conduct in question or if the member of staff fails to produce the necessary improvements.
  - Details of the discussion will be confirmed in writing to the member of staff.
- 5.3 Where discussions and support do not lead to the necessary improvements or relevant changes in conduct, within the agreed timescale, the member of staff will be advised in writing of further action to be taken, which may be formal. A record of these discussions will be retained and agreed by both parties.

## **6. Receipt of allegation**

- 6.1 On receipt of an allegation, the Headteacher or Chair of Governors will consider the appropriate course of action and will determine the following:
- The matter will be dealt with via an informal discussion (refer to section 5 of the policy).
  - A formal disciplinary investigation is required (refer to section 10 of the policy).
  - A formal disciplinary investigation is required under the Child Protection procedures (refer to section 20 of the policy).
- 6.2 The responsibility for disciplinary matters should be delegated by the Governing Body to the Headteacher. Any allegations made against the Headteacher will be dealt with by the Chair of Governors.
- 6.3 The Headteacher or Chair of Governors will seek advice from the Local Authority, HR & OD Service and or Diocesan Authority (as appropriate) when considering the appropriate course of action.

## **7. Suspension**

- 7.1 The decision to suspend should be taken on a case-by-case basis following a thorough risk assessment (Appendix 1) by the Headteacher or Chair of Governors. Where child protection allegations have been raised the Local Authority designated lead officer for safeguarding in education must be included in the discussion, which can then be shared with the members of the strategy group. However, suspension pending disciplinary proceedings should be considered for any case gross misconduct allegations where:
- It appears to be necessary to exclude the member of staff from the school, for the protection of pupils, other staff or property or the orderly conduct of the school.
  - The continued presence at work of the member of staff would be an obstacle to a proper investigation of the allegations made against that member of staff.
  - There is cause to suspect a child or other children at the school is/are at risk of significant harm.
  - The allegation warrants a criminal investigation by the police.
  - The case is so serious that it might be grounds for dismissal.
- 7.2 Before taking the decision to suspend a member of staff, the Headteacher and/or Chair of Governors should consider if other options are available, such as undertaking work that does not involve contact with pupils, or working from home.
- 7.3 Before taking a decision to suspend or take other action the Headteacher or Chair of Governors will seek advice from the Local Authority HR & OD Service and/or diocesan authority if appropriate. For child protection allegations the advice of the Local Authority designated lead officer for safeguarding in education and any statutory authorities that are involved, i.e. police or LA Social Services, will also be considered. The continued effect of the suspension will be kept under monthly review by the Headteacher or Chair of Governors and the outcome of the review reported to the member of staff.
- 7.4 Suspension will not be used in a punitive way and will be on full pay. Where possible, the member of staff will be called to a meeting with the Headteacher or Chair of Governors to relay the decision to suspend and where practicable the member of staff will be accompanied by their Trade Union representative or a work colleague. Confirmation of suspension will be given to the member of staff following a decision to suspend.

- 7.5 If it is not practicable for the decision to be conveyed during a meeting, the employee will be notified by alternative means (i.e. telephone or in writing). There is no appeal against the decision to suspend.
- 7.6 The decision to suspend can be taken by the Headteacher or the Chair of Governors but only the Governing Body can end a suspension. The Governing Body may delegate this responsibility to the Chair of Governors, this decision will be minuted.
- 7.7 Where the Headteacher is the subject of an allegation it would be usual for the Chair of Governors to have delegated responsibility for any suspension. In the absence of the Chair of Governors, the Vice Chair of Governors (or any other governor) may take over this responsibility subject to the necessary delegation. Only the Governing Body (or its delegate(s)) can end a suspension. The Governing Body may delegate this responsibility to the Chair of Governors, this decision will be minuted.
- 7.8 There is no requirement in law for the Headteacher and Chair of Governors to consult each other prior to suspending a member of staff, although they may do so as a matter of courtesy.
- 7.9 The Headteacher or Chair of Governors should inform the Director of Education of the Local Authority of any suspension in writing.
- 7.10 An Independent Officer will remain in regular contact with an employee who has been suspended. As the main point of contact, the Independent Officer will be able to monitor the member of staff's welfare and offer counselling where necessary and where able to, answer any questions regarding the process.
- 7.11 A breach of any of the conditions of suspension, could be subject to disciplinary procedures.

## **8. What may be regarded as lesser misconduct**

- 8.1 The following is a guide to conduct that may be regarded as lesser misconduct. A member of staff will not normally be dismissed for a first breach of discipline in cases of lesser misconduct but may receive a sanction in the form of a warning. Should the lesser misconduct be repeated, it may result in a more severe sanction under the lesser misconduct process or a referral to the Staff Disciplinary & Dismissal Committee where it constitutes gross misconduct. **This list is not exhaustive**
- Unauthorised absence and/or poor time keeping.
  - Refusal/failure to carry out a reasonable instruction.
  - Failure to adhere to the policies and procedures.
  - Deliberate or wilful unsatisfactory standards of work.
  - Disorderly behaviour whilst on duty.
  - Negligence causing injury or damage to property.
  - Using information obtained in the course of employment for personal gain or benefit.
  - Being inappropriately involved in decisions relating to discipline, promotion or pay adjustments for any employee who is a relative, partner or close friend.
  - Failing to meet obligations with regard to secondary employment.
  - Bullying, harassment.
  - Breach of specific codes of practice or legislation.
  - Failure to follow the school's Safeguarding policies and procedures.
  - Using public funds entrusted to them in an irresponsible and unlawful manner.
  - Accessing the internet for non-work- related purposes during working hours.
  - Inappropriate comments and use of social networking sites such as Twitter, Facebook or YouTube.
  - Inappropriate texting.

- Inappropriate conduct in the workplace.
- Breach of confidentiality or General Data Protection Regulations (GDPR).

## 9. What may be regarded as gross misconduct

**EXCLUDING ALLEGATIONS OF CHILD PROTECTION.**  
**ALLEGATIONS OF CHILD PROTECTION ARE COVERED IN SECTION 20 OF THE POLICY**

9.1 Gross Misconduct is conduct which strikes at the very heart of the contract of employment so that the Governing Body may be justified in dismissing or asking the Local Authority to dismiss the member of staff, following a disciplinary hearing where the evidence supports the allegation(s). In such cases, dismissal is likely to be without notice or payment in lieu of notice. All gross misconduct allegations will be subject to a formal disciplinary hearing before the Governing Body's Staff Disciplinary & Dismissal Committee. **This list is not exhaustive.**

- Specified conduct that is incompatible with the ethos and precepts of the school as set out in the school's prospectus, website, school staff terms and conditions of employment, etc.
- Fraudulent acts or theft of property belonging to the Local Authority, the school, fellow members of staff or pupils.
- Theft or fraud in and out of the workplace.
- Deliberate and serious damage to property belonging to the Local Authority, the school, fellow staff or pupils.
- Violent behaviour, including physical assault.
- Bullying, harassment or unlawful discrimination on any grounds.
- Sexual misconduct at work.
- Gross negligence.
- Causing loss, damage or injury through serious negligence.
- Serious incapability at work brought on by alcohol or other illegal substances on school premises.
- Serious insubordination.
- Deliberately accessing offensive or obscene material via internet sites, social networking sites or by messaging.
- Inappropriate texting.
- Dishonesty (e.g. tampering with examination papers, revealing examination papers prior to examinations, or altering examination results and assessments).
- Serious violation of the Local Authority or the school's health and safety rules and standards.
- Criminal misconduct outside the workplace which reflects adversely upon the school or the member of staff's suitability to continue to be employed at the school.
- Serious or deliberate falsification of the Local Authority or school's documents or provision of false information to the Local Authority or school.
- Knowingly providing false information on any matter relating to the member of staff's employment.
- Breach of confidentiality or General Data Protection Regulations (GDPR).
- Breach of specific codes of practice or legislation.
- Failing to disclose any financial or non-financial interests that could be considered as conflicting with the school's/Local Authority's interests.

9.2 If the allegation involves potential criminal activity a referral will be made to the police. If this happens the Governing Body will normally take no further action until the matter is referred back to the Governing Body to complete the disciplinary process. The police will also be asked to agree what information can be released to the member of staff.



## **10. The formal investigation**

- 10.1 As soon as an allegation has been brought to the attention of the Headteacher or the Chair of Governors a full investigation will be carried out. Where the allegation is about a member of staff, the investigation will be undertaken by a member of the Senior Leadership Team.
- 10.2 Where the allegation is about the Headteacher the Chair of Governors will, where possible, arrange for the investigation to be carried out externally, i.e. by the Local Authority, diocesan authority (if appropriate) or another independent person.
- 10.3 The member of staff will be advised of their right to object to any investigator. It will be for the Headteacher or Chair of Governors to determine whether the circumstances of the objection are valid and accepted.
- 10.4 The Investigating Officer will seek advice and support from the Local Authority HR & OD Service and or Diocesan Authority (as appropriate) throughout the investigation process.
- 10.5 The investigation will include gathering all evidence, interviewing all witnesses (including those identified by the member of staff), considering all the facts and producing a report. The member of staff will be given the opportunity to respond to the allegation and will be advised of their right to be accompanied by a work colleague or a representative of their Trade Union at an investigation interview meeting. Witnesses are also entitled to be accompanied by a work colleague or a representative of their Trade Union when giving evidence.
- 10.6 No undertaking of confidentiality will be given to witnesses; however, the overall confidentiality of the disciplinary process will be respected.
- 10.7 Once the investigation has concluded, the investigating officer will produce a written report and present the findings to the Headteacher or the Chair of Governors. This will be done as soon as practicable after the conclusion of the investigation. The investigating officer's report should be factual and objective and based on evidence gathered. It should not contain expressions of personal opinion or judgement on the part of the investigator relating to evidence, witnesses or the staff member under investigation. The report should not contain recommendations or conclusions as to what action should be taken.
- 10.8 The investigating officer should:
  - Be clear about the nature and content of the allegation.
  - Read all the documentary evidence.
  - Define the areas to be investigated and the parameters of the investigation.
  - Draw up lists of people to be interviewed and the order of the interviews.
  - Ensure that the investigation is thorough but seek to avoid interviewing more people than strictly necessary.
  - Draw up a list of issues/topics to be raised in the interviews to clarify the allegations.
  - Use a note taker and/or to record interviews (in the latter case having sought the agreement of the person being interviewed).
  - Consider whether translation or interpretation facilities are required.
  - Consider accessibility issues.
  - Consider confidentiality issues.
  - Ensure all interview notes are written up and signed and dated.
  - Produce a report in accordance with the investigation framework set out below.
  - Submit all documents to the Headteacher or the Chair of Governors and another governor where the allegation is against the Headteacher.
  - Maintain a record of all documents. This record (list of contents) should be released to all parties along with all evidence should the matter proceed to a hearing.

10.9 To avoid any duplication of interviews the suggested order for interviews is:

- The person making the allegation.
- Their witnesses.
- The member of staff against whom the allegation has been made.
- Any witnesses identified by them.
- Any other individual as deemed relevant by the investigator.

10.10 The investigator should not give undertakings of confidentiality to those making allegations or being interviewed. Evidence compiled in the investigation must be made available to the parties in any subsequent disciplinary proceedings and those giving evidence should be informed before giving their evidence that this will happen.

10.11 The point at which the member of staff is first interviewed by the investigator will depend on the nature of the allegation(s) made and whether other procedures have been triggered (for instance there may be a delay if the matter is being investigated by the statutory authorities).

10.12 Where allegations are made against a Trade Union representative the investigator should, where practicable, discuss the case with a senior representative or paid union official of that union prior to commencing the formal investigation.

10.13 In the case of the investigation being conducted by an independent investigator, they should not investigate any matter(s) that are not included within the terms of reference issued by the Headteacher or Chair of Governors. If the investigator is asked to investigate or otherwise identifies additional issues, they should immediately contact the Headteacher or Chair of Governors and await instructions about how to proceed. The Headteacher or Chair of Governors should seek advice from the Local Authority, HR & OD Service on any additional issues raised and how to proceed.

## **11. Completion of investigation – investigation outcome**

11.1 Based on the evidence and findings within the investigating officer's report the Headteacher or Chair of Governors may conclude that:

- The allegation is false or unfounded and no further action will be taken.
- Matters can be dealt with through an informal discussion (refer to section 5 of the policy).
- There appears to be sufficient evidence of misconduct for a hearing before the Headteacher or Chair of Governors (refer to section 12 of the policy).
- There appears to be sufficient evidence of misconduct for a hearing to take place but, because the member of staff currently has a written warning, the case should be referred to the Staff Disciplinary & Dismissal Committee (refer to section 15 of the policy).
- There appears to be sufficient evidence that the allegation constitutes potential gross misconduct to be considered at a disciplinary hearing before the Staff Disciplinary & Dismissal Committee. (refer to section 15 of the policy).

11.2 The Headteacher or Chair of Governors will seek advice from the Local Authority HR & OD Service and or Diocesan Authority (as appropriate) when making their determination.

11.3 The member of staff (and their Trade Union representative if requested by the member of staff) should be informed in writing as soon as possible what action, if any, will be taken following the investigation.

## **12. Hearing before the Headteacher or Chair of Governors**

- 12.1 A hearing will take place before the Headteacher or the Chair of Governors, supported by advice from the Local Authority, HR & OD Service and diocesan authority (where appropriate). Notes of the hearing will be taken by an appropriate officer or the Clerk to Governors.
- 12.2 The Director of Education, or their representative and a Diocesan Representative (where appropriate) are entitled to be present throughout the hearing to provide advice.
- 12.3 The member of staff will be sent a copy of this procedure and a copy of the investigation report and supporting documentation and will be informed in writing of:
- The nature of the alleged misconduct.
  - The date, time and place for the hearing.
  - The possible outcome/sanctions from the hearing if the allegation(s) are upheld.
  - Their right to produce written documentation which will be circulated to all parties in advance of the hearing.
  - Their right to produce witnesses, as appropriate to the investigation.
  - Be accompanied by a Trade Union representative or work colleague of their choice.
- 12.4 The member of staff should receive the investigating report and supporting documentation at least 10 working days prior to the hearing.
- 12.5 The member of staff should provide all relevant evidence to the Headteacher or Chair of Governors at least 5 working days prior to the hearing.

## **13. Hearing Procedure**

- 13.1 The Headteacher or Chair of Governors introduces all parties and explains the procedure of the hearing.
- 13.2 The full nature of the complaint against the employee will be presented by the investigating officer together with supporting evidence. The investigating officer may call any appropriate witnesses.
- 13.3 The member of staff and/or their representative may ask questions of the investigating officer and/or witnesses.
- 13.4 The Headteacher or Chair of Governors and their advisors may ask questions to the investigating officer and/or witnesses.
- 13.5 The member of staff and/or their representative present their case, together with any supporting evidence. The member of staff may call any appropriate witnesses.
- 13.6 The investigating officer may question the member of staff and any appropriate witnesses called on behalf of the member of staff.
- 13.7 The Headteacher or Chair of Governors and their Advisors may ask questions of the member of staff and any appropriate witnesses.
- 13.8 Witnesses will only attend the hearing to give their evidence. They will leave the room immediately after they have given evidence and been questioned by both parties but may be required to remain on hand in case of further questioning by the Headteacher or Chair of Governors.

- 13.9 The investigating officer and the member of staff or their representative will then sum up their case.
- 13.10 All those present, except for the Headteacher or Chair of Governors, their advisors and the note taker will be asked to withdraw from the hearing in order for the Headteacher or Chair of Governors to consider the matters and to make their determination.
- 13.11 The Headteacher or Chair of Governors can adjourn the hearing at any time for all parties to consider new evidence or for private discussion. Any party should be able to request an adjournment at any point.

#### **14. Hearing outcome – Headteacher or Chair of Governors**

- 14.1 The six possible outcomes following on from such a hearing are:
- Informal discussion – (refer to section 5 of the policy).
  - A first written warning – [live for 6 months].
  - A second written warning – [live for 12 months].
  - A final written warning [live for 18 months].
  - A referral to a disciplinary hearing before the Governing Body's Staff Disciplinary & Dismissal Committee (refer to section 15 of the policy).
  - The allegation is not upheld.
- 14.2 The duration of the warning may vary according to the detail of the offence and the detail of the required improvement. Warnings can be placed on record for different lengths of time than the periods set out. In certain circumstances warnings may remain on file indefinitely where proven allegation relate to safeguarding or child protection.
- 14.3 If the member of staff's conduct is satisfactory for the specified period of a warning, such warnings will be expunged from the staff member's file after the specified period ends and will not be referred to again once spent.
- 14.4 A final written warning may be issued where misconduct recurs despite attempts by senior managers to support the member of staff to improve their behaviour or conduct.
- 14.5 A final written warning may also be issued where a single instance of proven misconduct is considered to be of a serious nature. It will also be made clear to the member of staff that failure to address the behaviours which are the subject of a final written warning could lead to further disciplinary proceedings which could lead to dismissal.
- 14.6 All warnings will be issued to the member of staff at the conclusion of the hearing and in front of the member of staff's Trade Union representative or work colleague, where possible.
- 14.7 The warning will be confirmed in writing with a copy going to the member of staff's Trade Union representative/work colleague, if requested by the member of staff. A record of the warning will be placed on the member of staff's file.
- 14.8 Any warning letter should include:
- The specified period of the warning.
  - What action/improvement/outcome is expected for the future.
  - The action needed to avoid any further disciplinary action.
  - The consequences of any failure to take the necessary action.
  - The right to appeal.
  - The time limit within which the appeal should be made.

- How the appeal should be made.

## **15. Hearing before the Staff Disciplinary & Dismissal Committee**

- 15.1 A hearing will take place before the Staff Disciplinary & Dismissal Committee, who will be supported and advised by a Local Authority HR & OD Service and diocesan authority (where appropriate). Notes of the hearing will be taken by the Clerk to Governors.
- 15.2 The Staff Disciplinary & Dismissal Committee must have a minimum of three governors.
- 15.3 The Director of Education, or their representative and a Diocesan Representative are entitled to be present throughout the hearing to provide advice.
- 15.4 The clerk to the Governing Body will make the arrangements for any disciplinary hearings held in front of the Staff Disciplinary & Dismissal Committee.
- 15.5 The member of staff will be sent a copy of this procedure and a copy of the investigation report and supporting documentation and will be informed in writing of:
  - The nature of the alleged misconduct.
  - The date, time and place for the hearing.
  - The possible outcome/sanctions from the hearing if the allegation(s) are upheld.
  - Their right to produce written documentation which will be circulated to all parties in advance of the hearing.
  - Their right to produce witnesses, as appropriate to the investigation.
  - Be accompanied by a Trade Union representative or work colleague of their choice.
- 15.6 The member of staff should receive the investigating report and supporting documentation at least 10 working days prior to the hearing.
- 15.7 The member of staff should provide all relevant evidence to the Clerk to Governors at least 5 working days prior to the hearing.

## **16. Hearing Procedure**

- 16.1 The Chair of the Staff Disciplinary & Dismissal Committee introduces all parties and explains the procedure of the hearing.
- 16.2 The full nature of the complaint against the employee will be presented by the Headteacher and/or the investigating officer together with supporting evidence. The Headteacher/investigating officer may call any appropriate witnesses.
- 16.3 The member of staff and/or their representative may ask questions of the Headteacher and/or investigating officer and/or witnesses.
- 16.4 The Staff Disciplinary & Dismissal Committee and their advisors may ask questions to the Headteacher and/or investigating officer and/or witnesses.
- 16.5 The member of staff and/or their representative present their case, together with any supporting evidence. The member of staff may call any appropriate witnesses.
- 16.6 The Headteacher and/or investigating officer may question the member of staff and any appropriate witnesses called on behalf of the member of staff.
- 16.7 The Staff Disciplinary & Dismissal Committee and their Advisors may ask questions of the member of staff and any appropriate witnesses.

- 16.8 Witnesses will only attend the hearing to give their evidence. They will leave the room immediately after they have given evidence and been questioned by both parties but may be required to remain on hand in case of further questioning by the Staff Disciplinary & Dismissal Committee.
- 16.9 The Headteacher and/or investigating officer and the member of staff or their representative will then sum up their case.
- 16.10 All those present, except for the Staff Disciplinary & Dismissal Committee, their advisors and the clerk will be asked to withdraw from the hearing in order for the Staff Disciplinary & Dismissal Committee to consider the matter and make their determination.
- 16.11 The Staff Disciplinary & Dismissal Committee can adjourn the hearing at any time for all parties to consider new evidence or for private discussion. Any party should be able to request an adjournment at any point.

### **17.0 Hearing outcome – Staff Disciplinary & Dismissal Committee**

- 17.1 Having considered all of the evidence and taken into account the advice provided, the Staff Disciplinary & Dismissal Committee can determine the following:

- Summary Dismissal – without notice.
- A first written warning – [live for 6 months].
- A second written warning – [live for 12 months].
- A final written warning [live for 18 months].
- The allegation is not upheld.

In cases of dismissal consider:

- Referral to the Education Workforce Council (EWC) (refer to section 25 of the policy).
- Referral to the Disclosure and Barring Service, (refer to section 25 of the policy).

- 17.2 Where mitigating factors exist which justify a sanction short of dismissal, the Staff Disciplinary & Dismissal Committee may also apply one of the following sanctions in addition to issuing a written warning.
- Specified required training and development.
  - Demotion to a lower grade position (if practical) and/or loss of salary.
- 17.3 If a warning is issued, the duration of the warning may vary according to the detail of the offence and the detail of the required improvement. Warnings can be placed on record for different lengths of time than the periods set out. In certain circumstances warnings may remain on file indefinitely where proven allegation relate to safeguarding or child protection.
- 17.4 If the member of staff's conduct is satisfactory for the specified period of a warning, such warnings will be expunged from the staff member's file after the specified period ends and will not be referred to again once spent.
- 17.5 All warnings will be issued to the member of staff at the conclusion of the hearing and in front of the member of staff's Trade Union representative or work colleague, where possible.
- 17.6 The warning will be confirmed in writing with a copy going to the member of staff's Trade Union representative/work colleague, if requested by the member of staff. A record of the warning will be placed on the member of staff's file.

17.7 Any warning letter should include:

Confirmation of the sanction issued.

- If a warning is issued the specified period of the warning,
  - what action/improvement/outcome is expected for the future and
  - the action needed to avoid any further disciplinary action
  - the consequences of any failure to take the necessary action
- The right to appeal.
- The time limit within which the appeal should be made.
- How the appeal should be made.

17.8 A copy of the letter where the outcome is summary dismissal will be sent to the Local Authority, Director of Education in respect of staff in Community schools, for the Local Authority to issue the final termination letter.

## **18.0 Appeals**

18.1 A member of staff has the right of appeal against any disciplinary sanction.

18.2 All appeals will be heard by the Staff Disciplinary and Dismissal appeals Committee, supported and advised by a Local Authority HR and Legal representative and the Diocesan Authority (where appropriate), as soon as is reasonably practicable, ordinarily within 4 week of receipt of the request. Notes of the hearing will be taken by the Clerk to Governors.

18.3 The Staff Disciplinary and Dismissal Appeals Committee can have no fewer members than the Staff Disciplinary & Dismissal Committee although the appeals committee may have more members. No governor will be a member of both committees and both committees will have separate Local Authority advisors.

18.4 The Director of Education, or their representative and a Diocesan Representative are entitled to be present throughout the hearing to provide advice.

18.5 The clerk to the Governing Body will make the arrangements for any appeal hearings held in front of the Staff Disciplinary and Dismissal Appeals Committee.

18.6 The notice of the intention, grounds for appeal and all supporting documentation needs to be lodged with the clerk to the Staff Disciplinary and Dismissal Appeals Committee within 7 working days of receipt of the letter confirming the sanction. The appeal notice should set out the grounds for the appeal which could be that:

- There has been a procedural flaw in the first hearing.
- The findings are inconsistent with the evidence produced.
- The sanctions are inappropriate.
- The investigation or disciplinary procedure was in some way unfair or biased.
- New evidence has come to light that was not considered at the original hearing.

18.7 If the appeal contains insufficient information – i.e. that the letter does not identify what the grounds of appeal are - the employee and/or their representative will be informed that they need to re-submit their grounds. This should be within a reasonable timeframe and will not preclude the employee from appealing notwithstanding the fact that the initial deadline has passed.

18.8 An appeal received after the 7 working days deadline has expired will not be considered unless there are exceptional circumstances for the delay in lodging the appeal.

- 18.9 The purpose of the appeal hearing is to enable the Appeals Committee to consider the grounds for appeal. Appeal hearings will focus on the issues set out in the appeal notification and may not always take the form of a complete rehearing. The form of the disciplinary appeal hearing will be a matter for the Staff Disciplinary and Dismissal Appeals Committee to decide based on the nature of the appeal and any comments made.
- 18.10 The procedure for an appeal hearing should be the same format as the procedure for the disciplinary hearing, apart from the order of presentation, the appeal hearing will see the employee present their grounds for appeal first (refer to section 15 of the policy). The committee should have regard to the record of the original disciplinary hearing and its findings.
- 18.11 The member of staff will be given notice of the date and time of the appeal hearing and should receive the appeal report and supporting documentation at least 10 working days prior to the appeal hearing.
- 18.12 The member of staff should provide all relevant evidence to the Clerk to Governors at least 5 working days prior to the appeal hearing.

## **19.0 Appeal outcome**

- 19.1 The Staff Disciplinary and Dismissal Appeals Committee will come to one of three conclusions after considering all the facts presented to it, including any new evidence. These are to:

- Uphold the original decision of the Headteacher, Chair of Governors or the Staff Disciplinary & Dismissal Committee.
- Impose a lesser penalty.
- Dismiss the original decision and conclude that no disciplinary action should be taken.

In cases of dismissal consider:

- Referral to the Education Workforce Council (EWC), (refer to section 25 of the policy).
- Referral to the Disclosure and Barring Service, (refer to section 25 of the policy).

- 19.2 The Staff Disciplinary and Dismissal Appeals Committee will not impose a more severe penalty.
- 19.3 The decision of the Staff Disciplinary and Dismissal Appeals Committee will be final and the staff member will be informed in writing. The member of staff will be given a copy of the notes of the appeal hearing, if requested.
- 19.4 A copy of the letter where the outcome is summary dismissal will be sent to the Local Authority, Director of Education in respect of staff in Community schools, for the Local Authority to issue the final termination letter.

## **20.0 Allegations of Child Protection**

- 20.1 Governing Bodies (including governors involved in disciplinary and dismissal procedures relating to allegations of abuse) should familiarise themselves with the full content of Welsh Government Guidance Circular 009/2014 Safeguarding children in education: handling allegations of abuse



against teachers and other staff at [https://gov.wales/handling-allegations-abuse- against-teachers-and-staff](https://gov.wales/handling-allegations-abuse-against-teachers-and-staff).

- 20.2 Allegations of child protection will be brought immediately to the attention of the Headteacher who must inform the Chair of Governors. The Chair of Governors will receive allegation(s) against the Headteacher.
- 20.3 The Headteacher or Chair of Governors will immediately discuss the allegation and possible action with the Local Authority designated lead officer for safeguarding in education who has responsibility for discharging the Local Authority's safeguarding duties in terms of education where there is cause to believe that a member of staff has harmed or could have harmed a pupil who is registered at the school.
- 20.4 The purpose of the initial discussion is to consider the nature, content and context of the allegation and agree a course of action, but not to investigate. It will establish that an allegation has been made, what is alleged to have occurred, when and where the episode(s) is/are alleged to have occurred, who was involved and any other persons present.
- 20.5 Where this discussion concludes that beyond reasonable doubt the allegation is not true this decision and the justification for it will be recorded by the Headteacher/Chair of Governors and the Local Authority designated lead officer for safeguarding in education, and agreement reached on what information should be put in writing to the member of staff. No further disciplinary action will be taken. The Chair of Governors will be informed of this decision.
- 20.6 If the initial discussion and assessment indicates that an allegation might be true, and there are concerns about the welfare of a child/children, the Local Authority designated lead officer for safeguarding in education will arrange for a strategy discussion to take place involving the statutory authorities (i.e. Social Services and/or the police) in accordance with Local Authority child protection procedures.
- 20.7 The Headteacher or Chair of Governors will inform the member of staff about the allegation as soon as possible after consulting the Local Authority designated lead officer for safeguarding in education. However, if a strategy discussion is needed, or police or children's Social Services need to be involved, no information will be given until those agencies have agreed what information can be disclosed to the member of staff.
- 20.8 At any point the Headteacher or Chair of Governors may suspend the member of staff, on full pay, suspension will not be an automatic action but will be informed by a thorough risk assessment, which will be documented by the Headteacher or Chair of Governors (refer to section 7 of the policy). Other alternatives such as reassignment of duties will be considered and discussed with the Local Authority designated lead officer for safeguarding in education and the Local Authority HR & OD Service.
- 20.9 Only the Governing Body can end a suspension. The Governing Body may delegate this responsibility to the Chair of Governors, this decision will be minuted.
- 20.10 Once the statutory authorities (e.g. the police and Social Services) have concluded their consideration of the allegation, it will be referred back to the Governing Body to consider the next steps. This will happen even if the statutory authorities take the decision not to pursue a criminal investigation.
- 20.11 The Governing Body does not have to appoint an independent investigator where it is satisfied that, beyond reasonable doubt the allegation is not true, or that there is no evidence to corroborate the allegation. Similarly, there is no requirement to appoint an independent

investigator where the member of staff has admitted the allegation or been convicted of a criminal offence in relation to it.

## **21.0 Referral for an independent Investigation**

- 21.1 In accordance with the 2006 Staffing Regulations (as amended), where the allegation is that a teacher or member of staff employed under a contract of employment at the school has harmed a pupil registered at the school, the Governing Body is required to appoint an independent investigator to investigate the allegation prior to any disciplinary and dismissal proceedings. Harm is defined in the regulations as physical, sexual or emotional abuse.
- 21.2 However, the Governing Body must not decide to appoint an independent investigator until:
- The Headteacher or Chair of Governors on receipt of the allegation has consulted with the Local Authority designated lead officer for safeguarding in education and the Local Authority HR & OD Service.
  - The Local Authority designated lead officer for safeguarding in education has notified the Governing Body that they have discussed the allegation with the statutory authorities as appropriate.
  - The statutory authorities have notified the Governing Body that they have concluded their investigation (if any), and that any criminal proceedings arising from any such investigation by the statutory authorities and which concern the allegation have been discontinued or have otherwise concluded.
  - the Governing Body has consulted with the Local Authority designated lead officer for safeguarding in education and the Headteacher (unless the allegation is made against the Headteacher).
- 21.3 Governing Bodies must appoint an independent investigator to investigate allegations of harm caused to a registered pupil, except where it is satisfied:
- Beyond reasonable doubt that the allegation is not true.
  - Beyond reasonable doubt that there is no evidence to corroborate the allegation.
  - That the person about whom the allegation was made has admitted to having done what has been alleged.
  - That the person about whom the allegation has been made has subsequently been convicted of a criminal offence in relation to the same allegation following criminal proceedings.
- 21.4 The Chair of Governors can choose who to appoint as an independent investigator, subject to restrictions imposed by the 2006 Staffing Regulations (as amended) which stipulate that the person must not be:
- A member of the Governing Body making the appointment.
  - A governor from another school within the federation of schools.
  - A parent/carer of a current or former pupil of the school in question.
  - A current or former member of staff of the school.
  - A member or employee of the Local Authority that maintains the school.
  - A trustee of the school.
  - A member of the appropriate diocesan authority for the school (if applicable).
  - The body that appoints the foundation governors to the school Governing Body.
- 21.5 If there is any reasonable doubt or agreement cannot be reached the allegation will follow the Formal Investigation Process and will be independently investigated.
- 21.6 Any formal investigation will be conducted in line with (refer to section 10 of the policy).

## **22.0 Hearing – Child Protection Allegations**

- 22.1 A hearing will take place before the Staff Disciplinary & Dismissal Committee, supported and advised by the Local Authority HR & OD Service and diocesan authority (where appropriate). Notes of the hearing will be taken by the Clerk to Governors.
- 22.2 An **independent non-governor** member must sit on both the staff disciplinary and dismissal committees and staff disciplinary and dismissal appeals committees when dealing with allegations of child protection involving registered pupils.
- 22.3 The independent member has voting rights and must not be:
- A governor of the school in question.
  - A parent/carer of a current or former pupil of the school in question.
  - A current or former member of staff from the school at which the person subject to the disciplinary hearing is employed.
  - A member or employee of the Local Authority that maintains the school.
  - A trustee of the school.
  - A member of the appropriate diocesan authority for the school (if applicable).
  - The person who appoints the foundation governors to the school Governing Body.
- 22.4 The Staff Disciplinary & Dismissal Committee and the Staff Disciplinary and Dismissal Appeals Committee will each have at least two governors plus an independent non-governor with voting rights (as required in law). The appeals committee may have more governors but membership of the committees will not overlap.
- 22.5 The non-governor member cannot be Chair of either committee. A different independent non-governor member is required for each committee.
- 22.6 A disciplinary hearing will be held as soon as it can be arranged by the Clerk to the Staff Disciplinary & Dismissal Committee even if the member of staff has subsequently resigned, or is on sick leave if this is for an indeterminate period of time and the committee deems it appropriate and necessary.
- 22.7 Apart from the requirement of an independent non-governor, a disciplinary hearing for child protection allegations will be held in line with section 15 of this policy and any Appeal Hearing will be held in line with section 18 of this policy.

## **23.1 Resignation of an employee during the disciplinary process**

- 23.1 A member of staff may resign while disciplinary procedures are pending or incomplete. Where it is determined following a Formal Investigation that the allegations relate to gross misconduct the Headteacher or Chair of Governors should advise the staff member that disciplinary procedures will continue to completion. The school must not make a compromise or early settlement agreement where child protection allegations are being considered.
- 23.2 In many cases the period of notice for resignation will allow the Governing Body sufficient time to conclude the disciplinary proceedings. If the time is insufficient the Governing Body must give the member of staff the opportunity to attend, but it cannot compel a former staff member to attend a disciplinary hearing. Nonetheless, the Governing Body must complete the process and arrive at a view on the basis of the available evidence as to whether dismissal would have been the appropriate outcome.
- 23.3 This will ensure that the school complies with its statutory duties to make reports and provide relevant information to the Education Workforce Council (EWC) and the Disclosure & Barring

Service (DBS). In line with Safeguarding vulnerable Groups Act 2006 and the Education (Supply of Information Wales) Regulations 2009.

## **24. Failure to attend investigation meetings or disciplinary hearings**

- 24.1 Members of staff must attend all investigation meetings and hearings.
- 24.2 If a member of staff fails, without reasonable excuse to attend any meetings or hearings as part of the investigation process, a decision whether to re-arrange or to proceed in their absence will be made.
- 24.3 A meeting or hearing will only be re-arranged once, should the member of staff fail to attend the rearranged meeting or hearing then the case will ordinarily without reasonable excuse, be progressed in their absence.
- 24.4 In some cases it may be deemed reasonable to rearrange disciplinary investigation meetings or hearings, within agreed timescales, where the member of staff is unavailable due to sickness absence.
- 24.5 If the member of staff states that they are unfit due to sickness absence to attend a disciplinary meeting for an indeterminate period of time, advice should be sought from the occupational health unit as to the member of staff's ability to participate in the disciplinary process.
- 24.6 All parties should be sensitive to the possibility that any deferments in the disciplinary process could create uncertainty for the school and added stress for the member of staff.
- 24.7 If the member of staff is expected to be sick for an indeterminate period of time, it may be determined reasonable to proceed with the disciplinary hearing in their absence. Should a decision be made to proceed in their absence, the member of staff and their representative must be informed and the member of staff should be given the opportunity to use a representative or submit any written evidence to present their case.
- 24.8 If the member of staff were to decline the opportunity to use a representative and their own state of health would cause an extended delay in the proceedings, the disciplinary process could proceed on the basis that the member of staff has been afforded reasonable opportunity to make their case both at the investigation and hearing stage of the process.

## **25.0 Education Workforce Council (EWC) & Disclosure and Barring Service (DBS) Referrals**

### **25.1 Education Workforce Council (EWC)**

The employer/school has a statutory duty to make reports and provide relevant information to the Education Workforce Council in cases where the employer ceases to use, or would have ceased to use had they not resigned, a registered person's services on grounds of:

- Misconduct or professional incompetence.
- A conviction of a relevant offence where the conduct does not involve the harm, or risk of harm, to a child (as defined in the Safeguarding Vulnerable Groups Act 2006).

### **25.2 Disclosure and Barring Service (DBS)**

In cases where employers have removed an individual from a regulated activity because the employer thinks they have engaged in relevant conduct or posed a risk of harm to children, the Safeguarding Vulnerable Groups Act 2006 provides that employers must report the case to the DBS.

For Governing Bodies this means that where the Staff Disciplinary & Dismissal Committee has determined, following a disciplinary hearing, to dismiss a member of staff because of allegations of child abuse, the Governing Body must inform the DBS of their decision. The same would apply where the Governing Body would have dismissed the staff member but the staff member resigned or retired before dismissal could take place.



# PONTARDDULAIS COMPREHENSIVE SCHOOL

## YSGOL GYFUN PONTARDDULAIS

### Appendix 1

#### Suspension Risk Assessment

Employee Name:	
Assessment Date:	
Assessors:	
Incident/Allegations:	

Potential/Actual Risks	Specific Details of Risk	Likelihood			
		Highly Likely	Likely	Unlikely	Highly Unlikely
Could the continued presence in the workplace pose a risk to the individual (i.e. physical or emotional well-being)? ** Consider Occupational Health referral					
Could the continued presence in the workplace pose a risk to others (i.e. colleagues, third parties)?					
Could the individual's continued presence in the workplace possibly impede or make it difficult to conduct a full and proper investigation?					
Could the individual's continued presence in the workplace cause significant disruption to workplace activities (i.e. service provision)?					
Would the continued presence in the workplace pose a risk to the reputation of the employer?					
Would suspension be in the public interest?					

Could the allegation lead to or involve legal action and continued presence in the workplace potentially compromise a criminal investigation?					
Are there any other risks (e.g. financial)?					

CONTROL MEASURES/SAFEGUARDS		
Would the implementation of control measures/safeguards lessen the risks identified? <ul style="list-style-type: none"> <li>➤ Alternative duties</li> <li>➤ Change of location</li> <li>➤ Any other appropriate measure</li> </ul>	Yes	No
Detail proposed control measures/safeguards: 1. 2. 3. 4.		
Responsible Manager:		

OUTCOME OF ASSESSMENT (PLEASE COMPLETE RELEVANT BOX)	
Suspension not required	
Suspension required	